

**SUPERIOR COURT
OF THE
STATE OF DELAWARE**

JOSEPH R. SLIGHTS, III
JUDGE

NEW CASTLE COUNTY COURTHOUSE
500 NORTH KING STREET
Suite 10400
WILMINGTON, DE 19801
PHONE: (302) 255-0656

February 12, 2009

Sylvester Shockley
James T. Vaughn Correctional Facility
1181 Paddock Road
Smyrna, DE 19977
N440

Aaron R. Goldstein, Deputy Attorney General
Department of Justice
Carvel State Office Building
820 N. French Street
Wilmington, DE 19801

**Re: *Shockley v. Danberg, et al.*
C.A. No. 08M-09-013**

Dear Mr. Shockley and Mr. Goldstein:

The Court has considered the multiple motions that have been filed in connection with this matter. To follow is the Court's decision on all pending motions.

The Respondents have filed a "Motion for an Order Rescinding Petitioner Shockley's *In Forma Pauperis* Status." The Petitioner has opposed the motion and separately has moved to strike the motion. The Court is satisfied that Respondents have made a proper motion to rescind in compliance with Court rules and applicable law. Accordingly, Petitioner's Motion to Strike (D.I. 10) is **DENIED**.

Respondents correctly point out that the Petitioner, an inmate currently incarcerated at the James T. Vaughn Correctional Center, is subject to 10 *Del. C.* §

8804(f). This statute prohibits a prisoner from filing a complaint with an *in forma pauperis* status if the prisoner has, on at least three (3) prior occasions, “while incarcerated or detained in any facility, brought an action or an appeal in a federal court or a constitutional or statutory court of the State that was dismissed on the grounds that it was frivolous, malicious or failed to state a claim upon which relief may be granted....” *Id.* The statute sets forth only one exception to this prohibition in cases where the prisoner “is under imminent danger of serious physical injury at the time that the complaint is filed.” *Id.* The burden to establish *in forma pauperis* status is upon the applicant, and the Court may not waive the requirements of 10 *Del. C.* § 8804(f) when determining whether an applicant is qualified. *See Cardone v. State DOC*, 2008 WL 2447440, at *11 (Del. Ch. 2008).

The Respondents’ motion to rescind contains clear and convincing evidence that the Petitioner has had at least three actions dismissed as frivolous, malicious or for failure to state a claim prior to the filing of the instant action. *See* D.I. 7 at Exs. A-F. Accordingly, the Court’s grant of *in forma pauperis* status to the Petitioner was contrary to 10 *Del. C.* § 8804(f) and must be rescinded. Respondents’ Motion for an Order Rescinding Petitioner’s Shockley’s *In Forma Pauperis* Status (D.I. 7) is **GRANTED**.

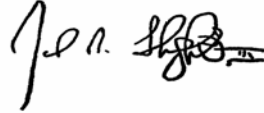
Respondents have also moved to dismiss the petition. Petitioner has opposed that motion and has filed a “Motion for Summary Judgment in Opposition to Respondents’ Renewed Motion to Dismiss and Joinder Motion.” Because the Court has determined that Respondents’ Motion to Dismiss is well grounded, as discussed below, Petitioner’s “Motion for Summary Judgment in Opposition to Respondents’ Renewed Motion to Dismiss and Joinder Motion” (D.I. 14) is **DENIED**.

The Petition in this case seeks a writ of mandamus compelling the Department of Corrections to afford the Petitioner “good time credit” on his life sentence imposed in 1982, several years before the 1989 Truth in Sentencing Act took effect. Petitioner is not entitled to good time credit on this pre-TIS sentence. *See Jackson v. Multi-Purpose Criminal Justice Facility*, 700 A.2d 1206, 1207 (Del. 1997)(offenders serving life sentences imposed prior to the Truth in Sentencing Act have never been and are not eligible for conditional release due to the accrual of “good time” credit). Moreover, Petitioner has previously sought and has been denied good time credit by both this court and the Supreme Court of Delaware. *See In Re Shockley*, 872 A.2d 960 (Del. 2005); *Shockley v. Taylor*, 882 A.2d 762 (Del. 2005). Petitioner has offered the Court no reason why these previous rulings on this identical issue should be revisited.

Accordingly, Respondents' Motion to Dismiss Pursuant to Rule 12(b)(6) (D.I. 8) must be **GRANTED**.

IT IS SO ORDERED.

Very truly yours,

A handwritten signature in black ink, appearing to read "J.R. Slights, III". The signature is stylized with a large initial "J" and a prominent "S".

Joseph R. Slights, III

JRS, III/sb

Original to Prothonotary